

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4581 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SOMABHAI B PATEL (PETITION FOR NO.1 DISMISSED AS ABATED).....

Versus

ADDL. CHIEF SECRETARY

Appearance:

MS KALPANA BRAHMBHATT for Petitioners
MS BR GAJJAR, AGP for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/11/2000

ORAL JUDGEMENT

1. The prayer of the petitioners in this writ petition is for a writ of certiorari, quashing the order dated 8-2-1990 (Annexure-'D') and restoring the orders dated 30-4-1987 and 15-10-1988 collectively produced at

2. The dispute is related to Entry no.4333, which was mutated in the name of the petitioners on 11-12-1971 and which was certified on 30-4-1972.

Brief factual back drop in which the aforesaid entry was made in favour of the petitioners is that, the land of Survey no.215/1 was mortgaged by the petitioners and father of the respondent nos.2 and 3. It is alleged that the petitioners redeemed the mortgage by paying from their pocket and no contribution for redemption of mortgage was made by the father of the respondent nos.2 and 3 or by the respondents aforesaid. After redeeming the land from possessory mortgage, the petitioners became owners w.e.f. 11-12-1971 and since then, they are alleged to be in continuous possession. On 11-12-1971, Entry no.4333 was posted in the Revenue Records in the name of the petitioners, which was certified on 30-4-1972. The respondent no.3 filed Civil Suit No.129/79 in the Court of Civil Judge (J.D.), Gandevi, District Valsad, praying declaration that the respondent nos.2 and 3 were co-owners of the aforesaid land and they claimed 1/3rd share therein. Permanent injunction was also sought. The said suit was dismissed; appeal was preferred. However, it is informed that, in appeal the judgment and decree of the trial Court was set-aside and the suit was remanded for fresh decision. On the one hand, the respondent no.3 filed aforesaid civil suit but, on the other hand, the respondent no.2 initiated RTS proceedings on 4-7-1986 vide RTS Appeal No.21/86. The Assistant Collector, on 30-4-1987 dismissed the appeal being time-barred holding that, it was filed after 15 years of the expiry of the period of limitation, which is 60 days from the knowledge of the order. Regular Civil Suit in respect of the same entry was pending in the competent civil court. The respondent no.2, feeling aggrieved from the order of the Assistant Collector dated 30-4-1987 filed RTS Revision No.14/87 in the Court of the Collector, Valsad, which was also dismissed on 15-10-1988. Feeling aggrieved from this order of the Collector, the respondent no.2 filed another revision before the respondent no.1, who allowed the same and set-aside the orders of the Assistant Collector & the Collector and quashed the Entry no.4333 and directed that the aforesaid entry should be corrected by entering the names of the heirs of Devabhai Bhagabhai. It is this order which is under challenge in this writ petition.

3. Ms.Kalpana Brahmbhatt, learned counsel for the petitioners and Ms.BR Gajjar, learned AGP representing

the respondent no.1 have been heard. None appeared for the respondent nos.2 and 3, though the list was revised thrice.

4. Learned AGP contended that, the impugned order is perfectly justified and is proper; hence, the writ petition is to be dismissed.

5. However, it is difficult to accept this contention for the obvious reasons that the RTS Appeal was dismissed by the Assistant Collector on the ground of bar of limitation. The Assistant Collector came to the conclusion that the appeal was not filed within 60 days of the knowledge of the entry. The Assistant Collector categorically observed in his order that the appellants mislead the Assistant Collector by reciting false facts about the date of knowledge of the aforesaid entry. The Assistant Collector took into consideration the allegations made in the Civil Suit filed by the respondent no.3, in which knowledge of the Entry no.4333 was asserted. The Assistant Collector further found that the appeal was filed after a period of 15 years and sufficient explanation or good cause was not shown explaining this inordinate delay of 15 years. Consequently, he dismissed the appeal being time-barred and rightly chose not to enter into the merits of the appeal.

6. A revision was filed before the Collector who agreed with the view taken by the Assistant Collector and dismissed the revision holding that the appeal was time barred and no sufficient explanation for inordinate delay of 15 years in filing the appeal came forward. If the two authorities rendered concurrent findings that the inordinate delay was not sufficiently explained, they were justified in not entering into the merits of the appeal or the revision. However, the respondent no.1, while passing the impugned order, has discussed in detail that there was sufficient cause for condonation of delay but, those findings are more presumptive than real. Even if, for a moment, it is accepted that there was sufficient cause for condonation of delay, the respondent no.1 could not have straightaway allowed the revision of the respondent no.2 and directed that the Entry no.4333 be corrected by showing the names of the heirs of Devabhai Bhagabhai. There is only casual mention in one paragraph that the land was given on possessory mortgage and it was redeemed; then the rights of the heirs of Devabhai Bhagabhai were required to be entered. The respondent no.1 forgot that it was a revision in revenue matter, and in matters relating to revenue entries,

question of title could not be adjudicated by the Revenue Authorities. Civil Suit is already pending, in which, the right, title, interest and share of the petitioners and the respondent nos.2 and 3 will be adjudicated in accordance with the remand order passed by the first Appellate Court. Mutation entries are made on the basis of possession. There is no finding, whatsoever, in the impugned order that the respondent nos.2 and 3 are also in joint possession of the land, in question. On the other hand, learned counsel for the petitioners has pointed out that the petitioners are in continuous possession after redemption of mortgage and they are paying taxes and other charges. Affidavit to this effect has been filed, which has not been controverted by the respondent nos.2 and 3. Without discussing in detail as to who is in possession of the land in question, the order of the respondent no.1, directing correction of entry by showing the names of all the heirs of Devabhai Bhagabhai, is illegal.

7. Learned AGP suggested that the matter may be remanded to the respondent no.1 for considering the merits of the case. However, I do not think it expedient to give further life to this infructuous and dead litigation. RTS proceedings were initiated after lapse of 15 years and the Assistant Collector, as well as, the Collector were justified in holding that, in the absence of explanation of sufficient cause, the delay of 15 years could not be condoned. If the delay in filing the appeal could not be condoned, it was to fail on the ground of limitation and those authorities were justified in not entering into the merits of the case. The reasons given by the respondent no.1 for condonation of delay are not convincing rather imaginary. Hence, neither delay can be condoned, nor the matter can be remanded to the respondent no.1 for fresh consideration of correction of entries on merits.

8. In the result, the impugned order is patently illegal, which can not be sustained. The petition therefore succeeds and is hereby allowed. The impugned order (Annexure-'D') dated 19-9-1989 is hereby quashed. No order as to costs.

November 16, 2000. [D.C. Srivastava, J.]

/sakkaf